IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.8071 of 2007

Ormerods (India) Private Limited ..Petitioner

vs.

Bank of Baroda ..Respondent

Shri Hiralal Thakkar, Sr.Advocate i/b Shri Anirudha Joshi and Shir Vishal Thakkar i/b Shri Vinod Thakkar for petitioner.
Shri V.Y.Sanglikar for respondent.

CORAM: S.C.DHARMADHIARI J.
14th December, 2007

P.C.

1. Heard both sides. Perused the petition and annexures thereto so also the affidavits on record. This writ petition under Article 227 of the Constitution of India is directed against the order of the Principal Judge, City Civil Court, Mumbai (Appellate Authority) dated 5th October, 2007 in Misc.Appeal No.10 of 2006.

2. The order under challenge dismisses the petitioners' appeal and confirms the order of the Estate Officer, Bank of Baroda dated 29th September,2005 in Case No.01 of 2003 which was instituted under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short

PP Act).

3. The petitioners occupy 2470 sq.ft. of area on 5th floor of the building known as "Bank of Baroda" building situated at Mumbai Samachar Marg, Mumbai. The petitioners are the monthly tenants and their tenancy has been terminated on 30th August, 2001 by notice under section 106 of the Transfer of Property Act. Upon service of this termination notice, there is a reply dated 10th September, 2001. The petitioners were called upon to vacate the said premises. The petitioners in their reply claimed protection of the guide-lines which have been issued under the Act. It was their case that the lawful tenants who have been in occupation from 1934 cannot be evicted by resorting to the provisions of the Act and the Act is for institution of proceedings against unauthorised occupants and trespassers. The lawful tenants who are protected under the Rent Control Legislation cannot be evicted in this manner.

4. The respondent Bank, not being satisfied with this filed an Application before the Estate Officer and sought eviction.

5. The Estate Officer followed the procedure prescribed and after giving necessary opportunities to the petitioners, passed the order of eviction. That order has been challenged in Misc.Appeal which has been dismissed by the impugned order.

6. Shri Thakkar, learned Senior Counsel appearing for the petitioners, firstly contended that the premises are governed by the Rent Control Legislation. Now, in the state of Maharashtra, there is a consolidating and amending statute, namely, Maharashtra Rent Control Act, 1999 which consolidates all Rent Control Laws which were prevailing in different parts of the State on the date the same came into force. The provisions of this Act which is admittedly later in point of time and having received the Presidential assent would prevail over the PP Act, which may be an earlier legislation. By virtue of Article 254 of the Constitution of India. Later State Legislation having received the Presidential assent will prevail over the PP Act. He relies upon Article 254 (1) and (2) so also proviso thereto.

7. His next submission is that the impugned

orders suffer from patent illegalities. The learned Judge proceeded on the footing that the guide-lines which have been promulgated and issued by the Central Government under the PP Act do not have statutory force. According to Shri Thakkar, the said observation and finding is directly contradictory to the Division Bench decision of this Court in the case of Nusli Neville Wadia Vs.New India Assurance Co. Ltd. and another reported in 2006(3) Mh.L.J.713 as also in the matter of Persis Kothawalla Vs. Life Insurance Corporation of India and another reported in 2004(4) Bom.C.R.610. He further submits that the same Appellate Authority in earlier order dated 3rd September, 2007 has given clearly contradictory finding and held that the guide-lines have statutory force. Therefore, once these guide-lines prohibit issuance of any notice terminating the tenancy and thereafter resorting to PP Act, the subject proceedings are void abinitio and bad in law. In such circumstances, the orders of the Estate Officer and the Principal Judge, cannot be sustained.

8. Alternatively, without prejudice, he submits that the authorities below failed to appreciate

that the notice terminating the tenancy initially stated that the premises are required by the Bank. However, when the same was replied by the petitioners, the Bank issued a clarification through its Advocate and took a stand that termination is not on the ground that the premises are required for the use and occupation of the Bank. In such circumstances, the guide-lines come into play. The Bank is a statutory authority. It is bound by the mandate of Article 14 of the Constitution of India. It could not have arbitrarily and high handedly initiated proceedings for eviction against the tenant who is in lawful occupation for past 60 years. That apart, according to him, the notice terminating the tenancy itself is bad in law. That notice is not issued by the Bank through its Central Office or Authority. It has been issued by the Mumbai Main Office. It is also not clear from the record as to whether the Deputy General Manager of Mumbai Main Office was authorised to issue such a notice terminating the tenancy. His authority has also not been placed on record. In such circumstances, there is no question of Estate Officer taking cognisance of the proceedings. Further, the application filed by the Bank before the Estate

Officer has been signed by one Winston Xavier Noronha, claiming to be Acting Chief Manager (Personnel) with the Bank of Baroda, Main Office. Shri Thakkar submits that presentation of the application is one thing whereas its verification and signature below the contents is something which must be preceded by clear authority. In such circumstances, and when the authority is absent, the Estate Officer could not have passed any order on such application.

9. Shri Thakkar, then, submits that the order of the Appellate Authority refers to the fact that the premises are being used by the present petitioners. Their business has gone down. Certain figures were introduced to show that the company does not have adequate financial capacity to carry on any business and all that is placed on record is that certain group companies and sister concerns are using the premises. Shri Thakkar submits that if eviction is not on the ground of subletting, then, there was no question of placing this aspect before the Appellate Authority. He submits that the occupation by the present petitioner along with Group companies and firms is admitted. Their business is flourishing. Therefore, relying

upon some figures pertaining to the petitioner, no adverse inference could have been drawn. Placing such aspect and taking cognisance of the same by the Authority would vitiate its order and that is how this Court must exercise its jurisdiction under Article 227 of the Constitution of India.

10. Shri Thakkar relies upon the following decisions in support of his case:

1. Nusli Nuville Wadia Vs. New India Assutrance Co. Ltd. and another reported in 2006(3) Mh.L.J. 713;

2. Persis Kothawalla Vs. Life Insurance Corporation of India and another reported in 2004(4) Bom.C.R.610

3. Prabhudas Narayan Gedam and others Vs. Municipal Council, Bhadrawati reported in 2003(1) Mh.L.J.275

4. Crawford Bayley and Co. and others Vs. Union of India and others reported in (2006)6 SCC 25

5. K.N.Sankaranarayanan and another Vs. Shree Consultations and Services Pvt.Ltd. and others reported in 1994 Company Cases Vol.80 page 558

6. Indian Commerce and Industries Pvt.Ltd. Vs.Swadharma Swarajya Sangha reported in 1998 Company Cases Vol.92 page 719.

11. Shri Sanglikar appearing for the respondent Bank supports the impugned order. His submission is that each of the grounds which are now placed before the Court to challenge the orders which are concurrent have no substance and are devoid of any merits. In sofar as the issue as to whether the Rent Control Legislation would prevail over the PP Act or not, according to Shri Sanglikar, that issue is fully covered by the Supreme Court decisions in the field including the one on which reliance is placed by Shri Thakkar. Shri Sanglikar submits that this is not a case where eviction is ordered of a genuine and lawful tenant with a view to harass him or somehow seek his eviction. The guide-lines may have a statutory flavour, yet, their applicability depends upon facts of each case. In the instant case, the petitioners have failed to establish that they are carrying on

any business worth its name from the said premises. On the other hand, the Bank of Baroda building which belongs to the respondent Bank should be utilised by the Bank for its use, in public interest. The Bank cannot be forced to go and place itself in rented accommodation. The petitioners do not deserve to remain in premises. In such circumstances, the guide-lines would not apply. His next submission is that all technical objections have been overruled in as much as the petitioners have fully participated in the matter. They have been given complete opportunity by the Estate Officer. They have replied to all the allegations in the show cause notice. In such circumstances, at this belated stage, on technical grounds, eviction order cannot be challenged. For all these reasons he submits that petition be dismissed.

12. While it is true that Article 227 of the Constitution of India has been the subject matter of several decisions of the Hon'ble Supreme Court of India and scope and ambit of this Court's powers have been fully set out in the single Judge's decision reported in 2003(1) Mh.L.J.275 (Prabhudas Narayan Gedam and others

Vs.s Municipal Council, Bhadrawati) on which reliance is placed by Shri Thakkar, yet, the applicability of the principles enumerated therein would depend upon the facts and circumstances of each case. In the present case, one cannot forget that a Notice of termination is issued under sec.106 of the Transfer of Property Act. This notice need not set out any reasons and merely because it sets out some reasons for termination, which lateron either are not proved or not pressed does not mean that the Notice itself is bad in law. If any authority is to be required for such a proposition, then, the Appellate Authority has already referred to the same. In the case of Jiwan Dass Vs. Life Insuraqnce Corporation of India and another reported in 1994 Supp (3) Supreme Court Cases 694, Hon'ble Supreme Court has observed thus:

> "4. Section 106 of the T.P.Act does indicate that the landlord is entitled to terminate the tenancy by giving 15 days' notice, if it is a premises occupied on monthly tenancy and by giving 6 months' notice if the premises are occupied for agricultural dor

manufacturing purposes, and on expiry thereof proceedings could be initiated. Section 106 of the T.P.Act does not contemplate of giving any reason for terminating the tenancy. Equally the definition of the public premises 'unauthorised occupation' under section 2(g) of the Act postulates that the tenancy "has been determined for any reason whatsoever." When the statute has advisedly given wide powers to the public authorities under the Act to determine the tenancy, it is not permissible to cut down the width of the power by reading into it the reasonable and justifiable grounds for initiating action for terminating the tenancy under Section 106 of the T.P.Act. If it is so read Section 106 of T.P.Act and Section 2(g) of the Act would become ultra vires. The statute advisedly empowered the authority to act in the public interest and determine the tenancy or leave or licence before taking action under section 5 of the Act. If the contention of the appellant is given acceptance he would be put on a higher

pedestala than a statutory tenant under the Rent Act. Take for example that a premises is let out at a low rent years back like the present one. The rent is unrealistic. With a view to revise adequate market rent, tenant became liable to ejectment. The contention then is, action is violative of Article 21 offending right to livelihood. This contention too is devoid of any substance. An owner is entitled to deal with his property in his own way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine of livelihood cannot indiscriminately be extended to the area of commercial operation. Therefore, we do not find any substance in the contentions of the appellant. The appeal is accordingly dismissed. No costs."

13. In the light of this clear pronouncement,

there is no reason to quash and set aside the impugned order on the ground that notice terminating the tenancy sets out reason of requirement of the respondent Bank but lateron the same is given up by the Bank. The proceedings do not get vitiated in as much as the notice under sec.106 of the Transfer of Property Act terminates the tenancy. Once there is a termination of tenancy, then, the respondent Bank could have relied upon such termination and made application for eviction of the petitioner before the Estate Officer on the basis that the petitioners are in unauthorised occupation of the subject premises. That apart, on record, the Bank has placed enough material to show that the premises are also needed by the Bank. It has also been pointed out in the affidavit in reply filed in this petition. It has been pointed out that the premises are situate in Bank of India building which is in Fort, Mumbai. It is a commercial centre of Mumbai. The Stock Exchange building is at a short distance from this place. Most of the commercial establishments within its vicinity. The premises are convenient for the Bank in every manner. The Bank can always, depending upon the commercial decisions, utilise the

premises which are meant for commercial use. If it is of the view that it need not pay the market rate as compensation and acquire other premises either on tenancy or otherwise but have its activities in its own premises, then, it cannot be said that its decision to terminate the tenancy of the commercial premises and seek eviction of the petitioners in the facts of this case, is in any way arbitrary and high handed. The bank has resorted to law and law permits the Bank to terminate the tenancy and seek eviction under the PP Act.

14. The fact that PP Act prevails upon the Rent Control Legislation is now clear. In the latest decision which was brought to my notice by Shri Thakkar also. The Supreme Court has reiterated the said principle in the case of Accountant and Secretarial Services (P) Ltd. Vs. Union of India reported in (1988) 4 SCC 324. In Crowford Beyley's case in the Supreme Court observe thus:

> "16. In this case, the question arose whether the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 will prevail over the West Bengal Premises Act, 1956 and the West Bengal Public

Land (Eviction of Unauthorised Occupants) Act, 1962. It was argued that since eviction from the premises of the Central statutory corporation owned or controlled by the Government, like nationalised banks in the State of West Bengal, is sought therefore both these Acts will govern. In that connection, Hon'ble Mr.S.Ranganathan, J.observed as under: (Accountant and Secretarial Services (P) Ltd. case, SCC p.352 para 31).

31. The present case is clearly governed by the primary rule in Article 254(1) under which the law of Parliament on a subject in the Concurrent List prevails over the State law. Article 254(2) is not attracted because no provision of the State Acts (which were enacted in 1956 and 1962) were repugnant to the provisions of an earlier law of Parliament or existing law. The fact that the 1956 Act was enacted, after being reserved for the President's assent is, therefore, immaterial. Even if the provisions of the main part of

> Article 254(2) can be said to be somehow applicable, the proviso, read with Article 254(1), reaffirms the supremacy of any subsequent legislation of Parliament on the same matter even though such subsequent legislation does not in terms amend, vary or repeal any provision of the State legislation. The provisions of the 1971 Act will, therefore, prevail against those of the State Acts and were rightly invoked, therefore, prevail those of the State Acts and were rightly invoked in the present case by the respondent Bank."
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> 17. Therefore, His Lordship has held that the premises of the Bank shall also be governed by the provisions of the Act, 1971. In view of the decision of this Court, the argument made by the appellant has no legs to stand."

15. In the light of these authoritative pronouncements it is not possible for me to accept the contention that the Maharashtra Rent Control Legislation being later in point of time and having received the Presidential assent must

prevail over the PP Act. I cannot ignore and brush aside the authoritative pronouncements. They are binding on me. It is well settled that merely because another argument is canvassed or other aspect of the same contention is placed before the Court, a precedent is not binding. It binds and about a judgment of the Hon'ble Supreme Court, it cannot be said that same aspect was not brought to its notice or escaped its attention (see A.I.R.1970 SC 1002 Ballabhdas Mathuradas Lakhani and others Vs. Municipal Committee, Malkapur) and A.I.R.2002 Supreme Court 1598 (Director of Settlements, A.P.and others Vs.M.R.Apparao and another) (Para 7). The Supreme Court has held that the Rent Control Legislation cannot prevail over P.P.Act. There are Constitution Bench decisions in the field. The Supreme Court decisions in the case of Ashoka Marketing Vs. Punjab National Bank reported in A.I.R.1991 S.C.853 and Kaiser-E-Hind reported in A.I.R.2002 S.C.4104 are delivered by five learned Judges. They dealt the same issue. They are binding upon everybody. They deal with the very aspect which was canvassed before me and Hon'ble Supreme Court rejected the submission that PP Act cannot prevail over the Rent Control Legislation of the State. In such

circumstances, even this submission is devoid of any merit.

16. In so far as maintainability of the application before the Estate Officer is concerned, I am of the view that a hyper technical approach cannot be adopted. The proceedings are not to be tried and disposed of as a suit. The Act and Rules set out the manner of disposal of the proceedings. By their very nature they are summary proceedings. It is not a case where a usurper or total stranger has initiated the proceedings. Mumbai Main Office which is directly dealing with the subject premises has issued the notice terminating the tenancy and has infact presented and verified the application. It is not the case of Shri Thakkar that the Mumbai Main office itself is not authorised to represent the Bank. If any officer who is senior at the Mumbai Main Office issues the termination notice and initiates the proceedings does not mean that he had no authority. The fact that the Central Office alone is empowered and authorised to initiate the proceedings or terminate the tenancy is devoid of any substance.

17. It is equally well settled that the notice under sec.106 of the T.P.Act has to be construed liberally. There can be no insistence upon production of the authorisation in this case. There is no dispute about the fact that the notice was under sec.106 of the Transfer of Property Act. It was duly received and replied is also not in dispute. The premises are belonging to the Bank and the Bank's Mumbai Main office had to act in the matter. That apart, the petitioners have participated in the proceedings. When they have replied to the notice under sec.106 of the T.P.Act, the issue of authority of the Mumbai Main Office cannot be now raised. Further, a reply to the application for eviction was filed and thereafter the petitioners have participated in the proceedings. It is not now open for them to urge that the proceedings themselves are vitiated on this technical ground.

18. In so far as the guide-lines are concerned, the law laid down by this Court is binding upon me. The guide-lines may have statutory flavour or character or may be traceable to the statute. However, their applicability depends upon the facts and circumstances of each case. It is not

as if the guide-lines prohibit initiation of the proceedings. It depends upon the action of the public body in each case. If a tenant is sought to be evicted only on the ground that the public body has to fulfil some commercial motive or that it does not require the premises otherwise but intends to put it to only to some profitable use, then, depending upon the other factors, it is stated in guidelines that the provisions of PP Act should not be resorted to. That apart, in the present case, it has come on record that the petitioners' business activities have considerably gone down. Both the Estate Officer and the Appellate Authority have referred to these aspects. The Appellate Authority has referred to the specific figures. The evidence on record, apart from demonstrating that the Bank requires the premises, also shows that the business of petitioners is negligible. The figures that are placed before the Appellate Authority would go to show that the annual income in the year 2002 was Rs.22.400/- and the expenditure was Rs.24,001/- The Estate Officer has termed the petitioner a defunct company. The business activities of the petitioners, must, in the present case be noticed with regard to the issue of applicability of guide-lines.

The petitioner accepts the annual income and expenditure as recorded. The record shows that the business activities are negligible. In the peculiar facts of this case, it cannot be urged that the Bank's action is high handed and arbitrary so also violative of the guide-lines. The guide-lines, therefore, could not protect the petitioners in this case. The petitioner wishes to rely upon the performance of the sister concerns and firms to submit that they are in need of the premises. This is a desparate attempt to avoid eviction. The petitioner is the tenant on record of the Bank and its performance is germane and relevant.

19. For the above reasons, I am of the view that the impugned orders do not suffer from patent illegality or perversity so as to call for interference in my supervisory so also equitable and discretionary jurisdiction under Article 227 of the Constitution of India. The petition is, therefore, dismissed. No costs.

20. At this stage, Shri Thakkar prays for stay of this order. This Court has recorded a statement of Shri Sanglikar that the Bank would not resort to any coercive measures to evict the

petitioners from the subject premises pending admission of this petition and the said statement continus till date. Shri Sanglikar states that he has no objection tothe said statement continuing for a period of six weeks from today.

20. In the light of the same there is no necessity of passing a specific order of stay as prayed. Statement of Shri Sanglikar is sufficient to protect the petitioners for a period of six weeks from today.

(S.C.DHARMADHIKARI J.)